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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

CUSTODIA BANK, INC.	}	
	}	
Plaintiff,	}	
	}	
vs.	}	Civil No. 1:22-cv-00125-SWS
	}	
FEDERAL RESERVE BOARD OF	}	
GOVERNORS and FEDERAL RESERVE	}	
BANK OF KANSAS CITY,	}	
	}	
Defendants.	}	

***DEFENDANTS' EXPEDITED MOTION TO AMEND THE
SCHEDULING ORDER***

Defendants Federal Reserve Bank of Kansas City ("FRBKC") and Federal Reserve Board of Governors (the "Board" or, collectively, "Defendants") respectfully request that this Court enter an Order to amend the scheduling deadlines in this case. In light of current upcoming deadlines, FRBKC requests an expedited ruling on this Motion. In support of this Motion, Defendants state as follows:

1. On June 30, 2023, this Court issued an Amended Scheduling Order following Judge Skavdahl's Order Granting in Part and Denying in Part Defendants' second

motions to dismiss. ECF No. 169.

2. As part of that Scheduling Order, the Court ordered that the end of fact discovery, motions for summary judgment, and Daubert motions would all occur on December 18, 2023.

3. At that time, Defendants contemplated that discovery would be narrow and focused on the issue of whether FRBKC exercised discretion in denying Custodia's request for a master account or, rather, as contended by Custodia, the Board made or controlled that decision. ECF No. 164 at 11.

4. Custodia, however, has sought extensive discovery from both FRBKC and third parties going far beyond that proper scope. *See* ECF Nos. 175, 197.

5. FRBKC has diligently responded to Custodia's requests. FRBKC has responded or objected to over 100 RFPs, RFAs and Interrogatories, and engaged in numerous meet and confers with Custodia. It has twice sought the Court's guidance in response to Custodia's overbroad requests. It has produced over 17,500 pages of documents and a lengthy privilege log. FRBKC expects that its document productions and privilege log will be completed shortly.

6. The Board timely submitted its administrative record.

7. To date, Custodia has taken five depositions of FRBKC employees and has used the full 7 hours on the record for every witness.

8. In addition, Custodia served two expert reports. Both of Custodia's proposed experts opine on issues of law, on the ultimate fact issues that the Court must decide, and on facts that the Court has ruled fall outside the scope of discovery. For example, both

experts opine on other institutions' master account requests, which this Court has said is outside the scope of discovery.

9. Despite the enormous amount of work done so far in discovery, there are numerous discovery issues that remain outstanding, and it has become clear that the parties would benefit from additional time to complete discovery and brief dispositive motions.

10. Here is what remains outstanding:

- a. Custodia has requested five more depositions of FRBKC employees, which are scheduled to occur over the next three weeks. Custodia also recently requested to take a sixth additional deposition (eleventh overall), which FRBKC will oppose.
- b. Custodia recently served additional RFPs on FRBKC, to which FRBKC intends to object.
- c. The parties need to complete briefing about the application of the deliberative process privilege.
- d. FRBKC served discovery requests on Custodia on September 1st and 22nd. Just today, and only days after learning that FRBKC intended to seek an extension of the schedule, Custodia produced its first documents in response to FRBKC's requests. It now claims that its production will be complete by November 17. Even if that date holds, it would leave only one month for FRBKC to conduct affirmative depositions and brief both summary judgments and Daubert motions (and/or motions to strike).
- e. FRBKC intends to take three or four fact depositions, but Custodia has

not yet offered dates, times, or locations for these witnesses.

f. FRBKC intends to depose both of Custodia's proposed expert witnesses and then oppose or respond to their reports.

g. Custodia has indicated that it may seek to negotiate or challenge the scope of the administrative record filed by the Board.

h. All parties need to file dispositive briefs, and motions to exclude proposed expert witnesses are expected.

11. Accordingly, to facilitate the orderly completion of discovery and efficient briefing of dispositive motions, Defendants respectfully request to amend the scheduling order in accordance with the following schedule:

	Current	Proposed
FRBKC's Expert Designation	Nov. 20, 2023	Dec. 4, 2024
List of Other Witnesses	Nov. 20, 2023	Dec. 4, 2024
Discovery Cutoff	Dec. 18, 2023	Jan. 5, 2024
Dispositive Motions/Daubert	Dec. 18, 2023	Jan. 31, 2024
Oppositions	Jan. 18, 2024	Feb. 28, 2024
Replies	Feb. 1, 2024	Mar. 13, 2024
Pre-Trial Conference	Mar. 21, 2024	Apr. 24, 2024
Bench Trial	Apr. 8, 2024	May 6, 2024

12. On October 31, 2023, FRBKC's counsel, Andrew Michaelson, conferred with Plaintiff's counsel, Ryan Scarborough, about these proposed changes to the scheduling order. Plaintiff's counsel opposes this request. It asserts that it is a nascent business that cannot afford delay. Given how Custodia has approached discovery to date, Custodia's objection rings hollow.

Dated: 2 November 2023.

FEDERAL RESERVE BANK OF KANSAS CITY,
Defendant

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CERTIFICATE OF SERVICE

I certify the foregoing *Defendants' Expedited Motion to Amend the Scheduling Order* was served upon all parties to this action pursuant to the Federal Rules of Civil Procedure on 2 NOVEMBER 2023, and that copies were served as follows:

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